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How Countries Govern International Tax Under the UN Framework

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Deep divisions between developed and developing countries at the midpoint of UN Framework Convention negotiations cast doubt on whether consensus on key international tax issues can be achieved, write KPMG's Alistair Pepper, Michael Plowgian, and Rajat Bansal.

Since the resolution initiating negotiations on the UN Framework Convention on International Tax Cooperation (the Convention) was [approved](#) in December 2024, the recurring question has been: What impact will this framework have on how businesses operating across borders are taxed?

For most businesses, the details of the discussions can be narrowed down to three key questions, namely, will the Convention:

- Replace the terms of existing tax treaties?
- Lead to the proliferation of withholding taxes?
- Improve existing dispute prevention and resolution mechanisms?

The divergence in countries' views suggests that reaching a conclusion with concrete outcomes remains very challenging.

Background. The latest round of negotiations on the UN Framework Convention on International Tax Cooperation concluded Aug. 13 — the midpoint in negotiations that are scheduled to conclude next year. During this round, delegates discussed drafts of the Convention, Protocol 1 on the Taxation of Cross-Border Services, and Protocol 2 on the Prevention and Resolution of Tax Disputes.

This round of negotiations illustrated again how the decision-making process adopted by the UN may impact the negotiation and implementation of the Convention, as discussed below.

Majority rule vs. consensus. In contrast to the way the Organization for Economic Cooperation and Development has historically [operated](#), [decisions on the Convention](#) can be made by a two-thirds or bare majority if countries are unable to reach consensus. This has been presented as a mechanism to unlock negotiations and enable countries to make radical changes to the existing international tax rules. Before accepting this assessment, it's worth pausing to consider how countries may respond if they don't support a decision that is adopted by a majority.

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It's feasible that some countries, particularly smaller ones, may feel bound by the decision and implement its conclusions. However, it seems likely that others, particularly larger countries, won't implement the decision they don't support. Moreover, these same countries are unlikely to agree that the Convention and its protocols apply automatically; rather, they are likely to insist that changes to existing agreements can only be made through bilaterally agreed changes.

The majority-based decision-making process may enable countries to adopt a convention that would be impossible if consensus were required. However, it also means that, if the convention is adopted over the objections of some countries, those countries are unlikely to adopt it. For this reason, the positions adopted by major countries remain important, because they are bellwethers for how the negotiations may play out but also because these countries are the most economically relevant for many multinational businesses.

Interaction with existing tax treaties. Existing bilateral tax treaties shape how countries tax multinationals. A key question has been whether countries are willing to replace the terms of their existing treaties with whatever provisions are ultimately included in the Convention and its Protocols. This issue is covered in Article 21 of the Convention.

A key objective of many African countries has been to mandate the rewriting of existing treaties to align with the Convention. Article 21, as drafted, delivers this outcome by requiring participants to the Convention to renegotiate their existing tax treaties based on the Convention when requested by another party.

Developed countries have consistently opposed such mandatory rewriting. However, it is not just the "traditional" developed countries that are opposed. China also objects. The Chinese delegate [stated](#) "...the existing bilateral tax treaties should be duly respected, and the renegotiation of existing bilateral treaties should not be mandatory."

Given the strength of country opposition to the mandatory rewriting of existing treaties, it's difficult to envisage this requirement being retained without a significant number of important countries, most notably China, refusing to sign up to the Convention.

Withholding taxes. The UN Model Tax Convention has always had a more permissive approach to withholding taxes than the OECD Model Tax Convention. In recent years, the scope of service payments potentially subject to gross taxation under the UN Model has been significantly expanded. Protocol 1, as drafted, expands the approach even further, for example by seeking to source and tax the income from automated digital services based on the jurisdiction in which the services are consumed.

The primary support for the expansion of gross-basis withholding taxes comes from African countries. Their objective, in the words of Morocco, is to [address](#) "imbalances in the allocation of taxing rights over services imposed by tax treaties." In contrast, developed countries have pushed back strongly against this proposal, highlighting a variety of concerns, most notably the risk that gross-basis withholding taxes lead to double taxation and are a barrier to international trade.

China's brief intervention was, again, notable: "China has more than 100 tax treaties,...and each treaty is an overall balance of different articles...we think they should be duly respected." In its statement, while not adopting an explicit position on Protocol 1, China indicated implicit opposition, given that Protocol 1 is seeking to change current treaties.

India's intervention was also of interest; it noted its extensive treaty network and spoke in support of retaining this existing structure, with the Convention used to address gaps in the existing rules. India's

intervention did not specifically identify what those gaps might be, but we interpret this being a statement of support for expanding the scope of withholding taxes, for example to automated digital services.

What does this mean for the future of withholding taxes? Again, it seems unlikely that the Convention will lead existing bilateral treaties involving countries that object to higher withholding taxes to be amended to adopt a more permissive approach to withholding taxes. If both parties to a treaty support higher withholding taxes, perhaps those treaties will be amended. In addition, maybe some countries will impose higher withholding taxes through their domestic laws, recognizing that these rights would to some extent be restricted by their existing treaties. But given the positions expressed in the negotiations, it seems unlikely that many large economies will significantly expand gross-basis withholding taxes under their treaties.

Dispute prevention and resolution. Multilateral tax policy discussions on dispute prevention and resolution typically move quickly to focus on whether arbitration should be available if a mutual agreement procedure, or MAP, cannot successfully resolve a dispute between competent authorities. Developed countries generally favor arbitration; developing countries generally oppose it. Countries' views on other issues, such as the benefits of MAP, are otherwise broadly aligned.

It's important to highlight that arbitration clauses are currently available in only a limited number of tax treaties (typically between OECD member countries) and, within the EU, through the [Directive on Tax Dispute Resolution Mechanism](#). Separately, arbitration clauses are also included in investment treaties, and these have been applied to tax matters in specific circumstances.

In the discussions on Protocol 2, countries restated their diverging views on arbitration. They also discussed whether the Protocol should only apply where parties to existing treaties or regional agreements agree (Alternative A) or should apply unless parties agree otherwise (Alternative B). This debate mirrored the discussions on Article 21, summarized above — with developed countries, including China, favoring Alternative A and developing countries typically favoring Alternative B.

Irrespective of the approach adopted, it's difficult to envisage countries that have arbitration clauses in their bilateral tax treaties removing them, as countries with such clauses remain supportive of arbitration. The countries that don't support arbitration generally don't have such clauses in their existing bilateral tax treaties, but it's feasible they want to use the approach of Protocol 2 to reopen other international agreements, such as investment treaties.

Arbitration aside, the Convention is not seeking to make material changes to how dispute prevention or resolution mechanisms currently operate. Nevertheless, by expanding access to such mechanisms to new transactions, notably between countries that don't currently have tax treaties, this protocol could make a meaningful and positive impact to improving tax certainty for some multinationals.

Going forward. Work on the Convention is scheduled to conclude by the end of 2027, with another round of negotiations set for later this year. Given the divergence in views between countries, particularly in respect of Protocol 1, it remains uncertain that countries will be able to achieve consensus.

It's clear from the most recent discussions that most major economies remain committed to the existing allocation of taxing rights, and it's difficult to envisage the Convention changing this. Nevertheless, the Convention could still serve as a model that its advocates could introduce in their domestic law, applying it when not constrained by an existing treaty, or where that treaty is subject to renegotiation.

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